SPEECH

OF

HON. ALEX. H. STEPHENS,

DELIVERED BEFORE

THE GEORGIA LEGISLATURE,

On Wednesday Night, March 16th, 1864.

REPORTED FOR THE ATLANTA INTELLIGENCER

BY A. E. MARSHALL,

AND REVISED BY HIMSELF.

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THE CLOSING LIGHT.

On Wednesday Night, March 30th, 1864.

SPEECH

OF

HON. ALEX. H. STEPHENS.

At the hour of 7½ o'clock, P. M., the Hall had been filled to its utmost capacity by members of the Legislature and citizens generally, and as the vast assemblage within saw the beloved form of Georgia's proud and noble son, every eye grew bright with joy, and a hearty and unanimous applause bid him welcome.

Mr. STEPHENS ascended the Speaker's stand and spoke as follows:

Gentlemen of the Senate and House of Representatives:

In compliance with your request, or at least with that of a large portion of your respective bodies, I appear before you to-night to speak of the state of public affairs. Never, perhaps, before, have I risen to address a public audience under circumstances of so much responsibility, and never did I feel more deeply impressed with the weight of it. Questions of the most momentous importance are pressing upon you for consideration and action. Upon these I am to address you. Would that my ability, physically, and in all other respects, were commensurate with the magnitude of the occasion. We are in the midst of dangers and perils. Dangers without and dangers within. Scylla on the one side and Charybdis on the other. War is being waged against us by a strong, unscrupulous and vindictive foe; a war for our subjugation, degradation and extermination. From this quarter threaten the perils without. Those within arise from questions of policy as to the best means, the wisest and safest, to repel the enemy, achieve our independence, to maintain and keep secure our rights and liberties. Upon the decision of these questions, looking to the proper development of our limited resources, wisely and patriotically, so that their entire efficiency may be exerted in our deliverance, with at the same time a watchful vigilance to the safety of the citadel itself, as much depends as upon the skill of our commanders and the valor of our citizen soldiers in the field. Everything dear to us as freemen is at stake. An error in judgment, though springing from the most patriotic motives, whether in councils of war or councils of state, may be fatal. He, therefore, who rises under

such circumstances to offer words of advice, not only assumes a position of great responsibility, but stands on dangerous ground. Impressed profoundly with such feelings and convictions, I should shrink from the undertaking you have called me to, but for the strong consciousness that where duty leads no one should ever fear to tread. Great as are the dangers that threaten us, perilous as is our situation—and I do not intend to overstate or understate, neither to awaken undue apprehension, or to excite hopes and expectations never to be realized—perilous, therefore, as our situation is, it is far, far from being desperate or hopeless, and I feel no hesitation in saying to you, in all frankness and candor, that if we are true to ourselves, and true to our cause, all will yet be well.

In the progress of the war thus far, it is true there is much to be seen of suffering, of sacrifice and of desolation; much to sicken the heart and cause a blush for civilization and christianity. Cities have been taken, towns have been sacked, vast amounts of property have been burned, fields have been laid waste, records have been destroyed, churches have been desecrated, women and children have been driven from their homes, unarmed men have been put to death, States have been overrun and whole populations made to groan under the heel of despotism; all these things are seen and felt, but in them nothing is to be seen to cause dismay, much less despair; these deeds of ruin and savage barbarity have been perpetrated only on the outer borders, on the coast, and on the line of the rivers, where by the aid of their ships of war and gunboats the enemy has had the advantage; the great breadth of the interior—the heart of our country—has never yet been reached by them; they have as yet, after a struggle of near three years, with unlimited means, at a cost of not less than four thousand millions of dollars (how much more is unknown) and hundreds of thousands of lives, been able only to break the outer shell of the Confederacy. The only signal advantages they have as yet gained have been on the water, or where their land and naval forces were combined. That they should have gained advantages under such circumstances, is not a matter of much surprise. Nations in war, like individual men or animals, show their real power in combat when they stand upon the advantages that nature has given them, and fight on their own ground and in their own element. The lion, though king of the forest, cannot contend successfully with the shark in the water. In no conflict of arms away from gunboats, during the whole war, since the first battle of Manassas to that of Ocean Pond, have our gallant soldiers failed of victory when the numbers on each side were at all equal. The farthest advance into the interior from the base and protection of their gunboats, either on the coast or the rivers, that the enemy has been able to make for three years was the late movement from Vicksburg to Meridian, and the speedy

turn of that movement shows nothing more clearly than the difficulties and disadvantages attending all such; these things should be noted and marked in considering our present situation and the prospects of the future. In all our losses up to this time, no vital blow has ever been given either to our cause or our energies. We still hold Richmond, after repeated efforts to take it, both by force and strategy. We still hold on the Gulf, Mobile, and on the Ocean front, Wilmington, Savannah and Charleston. These places have been, and are still held against the most formidable naval armament ever put afloat.

At Charleston the enemy seem to direct all their power, land and naval, that can be brought to bear in combination—all their energy, rancour and vengeance. "*Carthago delenda est*" is their vow as to this devoted city. Every means that money can command and ingenuity suggest, from the hugest engines of war never before known to the fiendish resort of Greek fire, have been and are being applied for its destruction. For nearly nine months the city, under the skill of our consummate commander, his subordinates, and the heroic virtues of our matchless braves in the ranks, still holds out against all the disadvantages of a defence without s... able naval aid. That she may continue to hold out, and her soil never be polluted by the unhallowed foot prints of her vandal besiegers, is, of course, the earnest wish of all. But even if so great a disaster should happen to us as the loss of Charleston, be not dismayed, indulge no sentiment akin to that of despair—Charleston is not a vital part. We may lose that place, Savannah, Mobile, Wilmington, and even Richmond, the seat of government, and still survive. We may lose all our strong places—the enemy may traverse our great interior as they have lately done in Mississippi, and we may still survive. We should, even under such calamities, be no worse off than our ancestors were in their struggle for independence. During the time that "tried men's souls" with them, every city on the coast, from Boston to Savannah, was taken by the enemy. Philadelphia was taken, and Congress driven away. South Carolina, North Carolina, portions of Georgia, Virginia, and other States, were overrun and occupied by the enemy as completely as Kentucky, Missouri, Louisiana and Tennessee are now. Take courage from the example of your ancestors—disasters caused with them nothing like dismay or despair—they only aroused a spirit of renewed energy and fortitude. The principles they fought for, suffered and endured so much for, are the same for which we are now struggling—State Rights, State Sovereignty, the great principle set forth in the declaration of independence—the right of every State to govern itself as it pleases. With the same wisdom, prudence, forecaste and patriotism; the same or equal statesmanship on the part of our rulers in directing and wielding our resources, our material of war, that controlled public affairs at that time, in the camp and

in the cabinet, and with the same spirit animating the breast of the people, devotion to liberty and right, hatred of tyranny and oppression, affection for the cause for the cause's sake; with the same sentiments and feelings on the part of rulers and people in these days as were in those, we might and may be overrun as they were; our interior may be penetrated by superior hostile armies, and our country laid waste as theirs was, but we can never be conquered, as they never could be. The issues of war depend quite as much upon Statesmanship as Generalship; quite as much upon what is done at the council board, as upon what is done in the field. Much the greater part of all wars, is business—plain practical every day life business; there is in it no art or mystery or special knowledge, except good, strong, common sense—this relates to the finances, the quartermaster's and commissary's departments, the ways and means proper—in a word to the resources of a country and its capacities for war. The number of men that can be spared from production, without weakening the aggregate strength—the prospect of supplies, subsistence, arms and munitions of all kinds. It is as necessary that men called out should be armed, clothed, shod and fed, as that they should be put in the field—subsistence is as essential as men. At present we have subsistence sufficient for the year, if it is taken care of and managed with economy.—Upon a moderate estimate, one within reasonable bounds, the tythes of wheat and corn for last year were not less, in the States east of the Mississippi, (to say nothing of the other side,) than eighteen million bushels. Kentucky and Tennessee are not included in this estimate. This would bread an army of five hundred thousand men and one hundred thousand horses for twelve months, and leave a considerable margin for waste or loss. This we have without buying or impressing a bushel or pound. Nor need a bushel of it be lost on account of the want of transportation from points at a distance from railroads. At such places it could be fed to animals, put into beef and pork, and thus lessen the amount of these articles of food to be bought. Upon a like estimate the tythe of meat for the last year, will supply the army for at least six months—rendering the purchase of supplies of this article necessary for only half the year—the surplus in the country, over and above the tythes, is ample to meet the deficiency. All that is wanting is men of business capacity, honesty, integrity, economy and industry in the management and control of that department. There need be no fear of the want of subsistence this year, if our officials do their duty. But how it will be next year, if the policy adopted by Congress, at its late session, is carried out, no one can safely venture to say.

This brings me to the main objects of this address, a review of those Acts of Congress to which your attention has been specially called by the Governor, and on which your action is

invoked—these are, the Currency, the Military, and the *Habeas Corpus* Suspension Acts. It is the beauty of our system of government, that all in authority are responsible to the people. It is, too, always more agreeable to approve than to disapprove what our agents have done. But in grave and important matters, however disagreeable or even painful it may be to express disapproval, yet sometimes the highest duty requires it. No exceptions should be taken to this when it is done in a proper spirit, and with a view solely for the public welfare. In free governments men will differ as to the best means of promoting the public good. Honest differences of opinion should never beget ill feelings, or personal alienations. The expressions of differences of opinion do no harm when truth alone is the object on both sides. Our opinions in all such discussions of public affairs, should be given as from friends to friends, as from brothers to brothers, in a common cause. We are all launched upon the same boat, and must ride the storm or go down together. Disagreements should never arise, except from one cause—a difference in judgment, as to the best means to be adopted, or course to be pursued, for the common safety. This is the spirit by which I am actuated in the comments I shall make upon these Acts of Congress.

As to the first two of these measures, the Tax Act and Funding Act, known together as the financial and currency measures, I simply say, in my judgment, they are neither proper, wise or just. Whether in the midst of conflicting views, in such diversity of opinion and interests, anything better could not be obtained, I know not—perhaps not. With that view we may be reconciled to what we do not approve. It is useless now to go into discussions of how better measures might have been obtained, or how bad ones might have been avoided—the whole is a striking illustration of the evils attending first departures from principle—the "*facilis descensus Averno.*" Error is ever the prolific source of error. Our present financial embarrassments had their origin in a blunder at the beginning, but we must deal with the present, not the past. These two Acts make it necessary for you to change your legislation to save the State from loss. As to the course you should adopt to do this, I know of none better than that recommended by the Governor. His views and suggestions on this point seem to be proper and judicious.

The military act by which conscription is extended so as to embrace all between the ages of seventeen and fifty, and by which the State is to be deprived of so much of its labor and stripped of the most efficient portion of her enrolled militia, presents a much graver question. This whole system of conscription I have looked upon from the beginning as wrong, radically wrong in principle and in policy. Contrary opinions, however, prevailed. But whatever differences of opinion may have been

entertained as to the constitutionality of the previous Conscript Acts, it seems clear to my mind that but little difference can exist as to the unconstitutionality of this late act. The act provides for the organizing of troops of an anomalous character—partly as militia and partly as a portion of the regular armies. But in fact, they are to be organized neither as militia or part of the regular army. We have but two kinds of forces, the regular army and the militia—this is neither. The men are to be raised as conscripts for the regular forces, while their officers are to be appointed as if they were militia. If they were intended as militia, they should have been called out, through the Governor, in their present organizations—if as regular forces they cannot be officered as the act provides. It is most clearly unconstitutional. Who is to commission these officers? The Governor cannot, for they are taken from under his control; the President cannot constitutionally do it, for he can commission none except by and with the advice and consent of the Senate. It is for you to say whether you will turn over these forces, and allow them to be conscripted, as is provided, leaving the question of constitutionality for the courts, or whether you will hold them in view of agricultural and other interest, or for the execution of your laws, and to be called out for the public defense in case of emergency by the Governor when he sees the necessity, or when they are called for as militia by the President. The Act upon its face, in its provisions for details, seems to indicate that its object is not to put the whole of them in the field. Nothing could be more ruinous to our cause if such were the object and intention and should it ever be carried into effect. For if all the white labor of the country, from seventeen to fifty—except the few exemptions stated—be called out and kept constantly in the field, we must fail, sooner or later, for want of subsistence and other essential supplies. To wage war successfully, men at home are as necessary as men in the field. Those in the field must be provided for, and their families at home must be provided for. In my judgment, no people can successfully carry on a long war, with more than a third of its arms-bearing population kept constantly in the field, especially if cut off by blockade, they are thrown upon their own internal resources for all necessary supplies, subsistence and munitions of war. This is a question of Arithmetic on well settled problems of political economy. But can we succeed against the hosts of the enemy unless all able to bear arms up to fifty years of age are called to and kept in the field? Yes, a thousand times yes, I answer, with proper and skillful management. If we cannot without such a call, we cannot with it, if the war last long. The success of Greece against the invasion by Persia—the success of the Netherlands against Philip—the success of Frederic against the allied powers of Europe—the success of the Colonies against Great Britain, all show that it

can be done. If our only hope was in matching the enemy with equal numbers, then our cause would be desperate indeed. Superior numbers is one of the chief advantages of the enemy. We must avail ourselves of our advantages. We should not rely for success by playing into his hand. An invaded people have many advantages that may be resorted to, to counterbalance superiority of numbers. These should be studied, sought and brought into active co-operation. To secure success, brains must do something as well as muskets.

Of all the dangers that threaten our ultimate success, I consider none more imminent than the policy embodied in this Act, if the object really be, as its broad terms declare, to put and keep in active service all between the ages of seventeen and fifty, except the exempts named. On that line we will most assuredly, sooner or latter, do what the enemy never could do, conquer ourselves. And if such be not the object of the Act—if it is only intended to conscript men not intended for service, not with a view to fill the army, but for the officials, to take charge of the general labor of the country and the various necessary avocations and pursuits of life, then the Act is not only wrong in principle but exceedingly dangerous in its tendency.

I come, now, to the last of these Acts of Congress. The suspension of the writ of *Habeas Corpus* in certain cases. This is the most exciting, as it is by far the most important question before you. Upon this depends the question, whether the courts shall be permitted to decide upon the constitutionality of the late Conscript Act, should you submit that question to their decision, and upon it also depend other great essential rights enjoyed by us as freemen. This Act, upon its face, confers upon the President, the Secretary of War, and the General commanding in the trans-Mississippi Department, (the two latter acting under the control and authority of the President) the power to arrest and imprison any person who may be simply charged with certain acts, not all of them even crimes under any law; and this is to be done without any oath or affirmation alledging probable cause as to the guilt of the party. This is attempted to be done under that clause of the Constitution, which authorizes Congress to suspend the privilege of the writ of *Habeas Corpus*, in certain cases.

In my judgment this act is not only unwise, impolitic and unconstitutional, but exceedingly dangerous to public liberty. Its unconstitutionality does not rest upon the idea that Congress has not got the power to suspend the privilege of this writ, nor upon the idea that the power to suspend it, is an implied one, or that clearly implied powers are weaker as a class and subordinate to others, positively and directly delegated.

I do not understand the Executive of this State to put his argument against this Act upon any such grounds. He simply states a fact, as it most clearly is, that the power to suspend at

all is an implied power. There is no positive, direct power delegated to do it. The power, however, is clear, and clear only by implication. The language of the Constitution, that "the privilege of the writ of *habeas corpus* shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it," clearly expresses the intention that the power may be exercised in the cases stated; but it does so by implication only, just as if a mother should say to her daughter, you shall not go unless you ride. Here the permission and authority to go is clearly given, though by inference and implication only. It is not positively and directly given. This, and this only I understand the Governor to mean when he speaks of the power being an implied one. He raises no question as to the existence of the power, or its validity when rightfully exercised, but he maintains, as I do, that its exercise must be controlled by all other restrictions in the Constitution bearing upon its exercise. Two of these are to be found in the words accompanying the delegation. It can never be exercised except in rebellion or invasion. Other restrictions are to be found in other parts of the Constitution. In the amendments to the Constitution adopted after the ratification of the words as above quoted, these amendments were made, as is expressly declared in the preamble to them, to add "further declaratory and restrictive clauses," to prevent misconstruction or abuse of the powers" previously delegated. To understand, all the restrictions, therefore, thrown around the exercise of this power in the Constitution, these additional "restrictive clauses" must be read in conjunction with the original grant whether that was made positively and directly, or by implication only. These restrictions, among other things declare, that "no person shall be deprived of life, liberty or property without due process of law," and that the right of the people to be secure in their persons, houses, papers and effects, against *unreasonable* searches and *seizures shall not be violated*, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

All admit that under the clause as it stands in the original grant, with the restrictions there set forth, the power can be rightfully exercised only in cases of rebellion or invasion. With these additional clauses, put in as further restrictions to prevent the abuse of powers previously delegated, how is this clause, conferring the power to suspend the privilege of the writ of *habeas corpus*, now to be read? In this way, and in this way only: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." And no person "shall be deprived of life, liberty, or property, without due process of law." And further, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable search-

es and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The attempted exercise of the power to suspend the privilege of the writ of *habeas corpus* in this Act, is in utter disregard in the very face and teeth of these restrictions, as much so as a like attempt in time of profound peace would be in disregard of the restrictions to cases of rebellion and invasion, as the Constitution was originally adopted. It attempts to provide for depriving persons "of liberty, without due process of law." It attemps to annul and set at naught the great constitutional "right" of the people, to be secure in their persons against "unreasonable seizures." It attempts to destroy and annihilate the bulwark of personal liberty, secured in our great chart to the humblest as well as the highest, that "no warrants shall issue but upon probable cause, supported by oath or affirmation," and "particularly describing the person to be seized." Nay more, it attempts to change and transform the distribution of powers in our system of government. It attempts to deprive the Judiciary Department of its appropriate and legitimate functions, and to confer them upon the President, the Secretary of War, and the General officer commanding the Trans-Mississippi Department, or rather to confer them entirely upon the President, for those subordinates named in the Act hold their places at his will, and in arrests under this Act are to be governed by his orders. This, by the Constitution, never can be done. Ours is not only a government of limited powers, but each department, the legislative, executive and judicial, are seperate and distinct. The issuing of warrants, which are nothing but orders for arrests against civilians or persons in civil life, is a judicial function. The President, under the Constitution, has no power to issue any such. As commander-in-chief of the land and naval forces, and the militia when in actual service, he may order arrests for trials before Courts Martial, according to the rules and articles of war. But he is clothed with no such power over those not in the military service, and not subject to the rules and articles of war. This Act attempts to clothe him with judicial functions, and in a judicial character to do what no Judge, under the Constitution, can do: issue orders or warrants for arrest, by which persons are to be deprived of their liberty, imprisoned, immured in dungeons, it may be without any oath or affirmation, even as to the probable guilt of the party accused or charged with any of the offences or acts stated. This, under the Constitution, in my judgment, cannot be done. Congress can confer no such power upon our Chief Magistrate. There is no such thing known in this country as political warrants, or "*lettres de cachet.*" This

Act attempts to institute this new order of things so odious to our ancestors, and so inconsistent with constitutional liberty.

This Act, therefore, is unconstitutional, not because Congress has not power to suspend the privilege of the writ of *habeas corpus*, but because they have no power to do the thing aimed at in this attempted exercise of it. Congress can suspend the privilege of the writ—the power is clear and unquestioned—neither is the power, as it stands, objectionable. Georgia, in the Convention, voted against the clause conferring it in the Constitution as originally adopted—that, perhaps, was a wise and prudent vote. But, with the restrictions subsequently adopted, there can be no well grounded objection to it. It is, under existing restrictions, a wise power. In time of war, in cases of rebellion or invasion, it may often be necessary to exercise it—the public safety may require it. I am not prepared to say that the public safety may not require it now. I am not informed of the reasons which induced the President to ask the suspension of the privilege of the writ at this time, or Congress to undertake its suspension as provided in this Act. I, however, know of no reasons that require it, and have heard of none.—But in the exercise of an undisputed power, they have attempted to do just what cannot be done—to authorize illegal and unconstitutional arrests—there can be no suspension of the writ, under our system of government, against unconstitutional arrests—there can be no suspension allowing, or with a view to permit and authorize, the seizure of persons without warrant issued by a judicial officer upon probable cause, supported by oath or affirmation—the whole Constitution must be read together, and so read and construed as that every part and clause shall stand and have its proper effect under the restrictions of other clauses.

If any conflict arises between clauses in the original and the amendments subsequently made, the original must yield to the amendments. As a will previously made always yields to the modifications of a codicil. Such, of course, was the condition of the old Constitution with its amendments, when the States of this Confederacy adopted it—and it was adopted by these States with the meaning, force and effect it then had. In construing, therefore, those parts of the old Constitution which we adopted, we stand just where we should have stood under like circumstances, under it. With these views it will clearly appear that under our Constitution, Courts cannot be deprived of their right or be relieved of their duty to enquire into the legality of all arrests except in cases arising in the land and naval forces or in the militia, when in actual service—for the government of which a different provision is made in the Constitution. Under a Constitutional suspension of the privilege of the writ all the Courts could do, would be to see that the party was legally arrested and held—upon proper warrant—upon probable

cause, supported by oath or affirmation setting forth a crime of some violation of law. Literally and truly then the only effect of a Constitutional exercise of this power over the writ of *habeas corpus* by Congress, is to deprive a person, after being legally confined, of the privilege of a discharge before trial, by giving bail, or on account of insufficiency of proof as to probable cause or other like grounds. This *privilege* only can be *suspended*, and not the writ itself. The words of the Constitution are aptly chosen to express the purpose and extent to which a suspension can go in this country. With this view the power is a wise one. It can work no serious injury to the citizen and it sufficiently guards the public safety. The party against whom a grave accusation is brought, supported by oath or affirmation, founded upon probable cause, must be held for trial, and it found to be guilty is to be punished according to the nature of his offence. The monstrous consequences of any other view of the subject are apparent. The exercise of the power by Congress may be either general or limited to special cases as in this instance. If it had been general under any other view what would have been the condition of every citizen in the land? The weaker would have been completely in the power of the stronger without remedy or redress. Any one in the community might seize for any motive or for any purpose, any other, and confine him most wrongfully and shamefully. Combinations of several against a few might be formed for a like purpose, and there would be no remedy or redress against this species of licensed lawlessness. The Courts would be closed—all personal security and personal safety would be swept away. Instead of a land of laws, the whole country would be no better than a Whitefriars domain—a perfect Aisatia. This would be the inevitable effect of the exercise of the power, by a general suspension, with any other view of the subject, than this presented. The same effects as to outrages upon personal rights must issue under a limited suspension confined to any specified cases under any other view. No such huge and enormous wrongs can ever spring from our Constitution if it be rightly administered. So that the conclusion of the whole matter is well stated by the the Governor in his late Message, in the brief, comprehensive, but exact terms—"The only suspension of the privilege of the writ of *habeas corpus* known to our Constitution and compatible with the provisions already quoted, goes to the simple extent of preventing the release, under it, of persons whose arrests have been ordered, under Constitutional warrants from Judicial Authority."

On this subject much light is to be derived from English History. Our whole system of Constitutional liberty rests upon principles established by our Anglo-Saxon ancestors. But between their system and ours, there are several differences that should be noted and marked—and none more striking and fun-

damental than the difference between the two upon this subject. With them the right of personal security against illegal arrests, was wrested from the Crown by the Parliament, and established by *Magna Charta*, the Bill of Rights, the abolition of Star Chamber, and the grant of the Great Right of the writ of *Habeas Corpus*, which is the means of redress against violations of law, and other wrongs [illegible] rights secured and acknowledged. In the abolition of [illegible] Court of Star Chamber, the power was taken from the King, his heirs and successors forever, and every member of his Privy Council, to make any arrest of any person for any offence or alleged crime, except by due process of law. By this Act, the power of the King to issue warrants or orders of arrest, unsupported by oath or affirmation, setting forth probable cause, which before, had been claimed as a royal prerogative, was taken away from him and his successors forever. The ruling Monarch, Charles I, gave his consent to the Act and yielded the power. He afterwards broke his pledge. Civil commotions ensued from this and other causes. He lost his head upon the block. The subsequent history of that strife between the people and the Crown of England, on this and other matters is not now pertinent to the object before us. Suffice it to say that it ended in the settlement as it is termed between the Parliament and their New Sovereigns, William and Mary—in 1688, '89. In this settlement, all the ancient rights and liberties of the English people, including the right of the writ of *Habeas Corpus*, were reaffirmed and secured. Such were the liberties, inherited as a birth right, that our British ancestors brought with them to this Continent. The principles established in England, after centuries of struggle and blood, formed the basis upon which the great structure of American Constitutional liberty was erected. But the striking difference between their system and ours to which I have alluded and which should never be lost sight of, is that with them, all power originally belonged to the Crown. All rights and liberties were grants from the Crown to the Parliament, and through them to the people, while with us all power originally belonged to the people—and essentially, still resides with them. They have appointed agents to perform the functions of Government in the different Departments, Executive, Judicial and Legislative, under the form of Government set forth in the Constitution, clothed with the exercise of certain delegated, specific and limited powers. In England it is competent for the Parliament at any time to return to the Crown all the Powers heretofore extorted from their Kings. They are are not restrained as our Congress is, by a want of power to do so on their part. They can repeal any day *Magna Charta*, the *Habeas Corpus* act and the whole Bill of Rights, and render their ruling Monarch as absolute as either of the Tudors or Stuarts ever claimed or wished to be. The principles of *Magna Charta* as to personal

liberty and the right of the writ of *Habeas Corpus* to secure those rights are put in our fundamental laws, and cannot be violated by Congress, for their powers are limited, and they are themselves bound by the Constitution. That the British people would ever submit to a surrender of their rights by Parliament, no one can for a moment believe. But Parliament claims to be omnipotent and could make the surrender, if they chose to run the risk. Hence analogies between this country and that on the suspension of the writ of *Habeas Corpus* and the effect of such suspension, either generally or specially, should be closely scanned, even in England, so great is the regard for liberty, suspensions have been rare since the settlement of 1688–'89. The writ was suspended there in 1715 and in 1745—and in 1788 it was suspended in Ireland with the Power conferred on the Lord Lieutenant to make arrests. Under the system of Government in England, the Parliament could confer this power upon the Crown or the Lord Lieutenant, or upon any other person they saw fit. Not so with our Congress, under our Constitution. In criticisms upon the Governor's Message, these suspensions have been alluded to against the positions of the Message. They are not in conflict at all. What the Governor states is that he is not aware of any "instance in which the British *King* has ordered the arrest of any person in civil life in any other manner than by judicial warrant issued by the established Courts of the nation, or in which *he* has suspended or attempted to suspend the privilege of the writ of *Habeas Corpus*, since the Bill of Rights and the Act of settlement passed in 1689." He did not say that Parliament had not suspended it, or that our Congress could not suspend it, in a proper way, but that even in England, where Parliament was unrestrained, they had not, since the settlement *conferred* upon the *Crown*, the power to make arrests, so far as he was aware.

At this point I will briefly refer to the suspension by our Congress, alluded to the other night by the distinguished gentleman, (Hon. A. H. Kenan) who lately represented this District; a gentleman whose remarks I listened to with a great deal of interest, and whose personal friendship I esteem so highly. He referred to the Act of the Confederate Congress, passed October 13, 1862, and asked—Why were there no objections made to that? This Act he read. I have it before me. It provides that the "President, during the present invasion, shall have the power to suspend the privileges of the writ of *habeas corpus* in any city, town, or military district, whenever, in his judgment, the public safety may require it; but such suspension shall apply only to arrests made by the authorities of the Confederate Government, or for offences against the same," and in section 2d, that "the President shall cause proper officers to investigate the cases of all persons so arrested, in order that they may be discharged if improperly detain-

ed, unless they can be speedily tried in due course of law." The 3d section limits the Act to thirty days after the meeting of the next Congress.

The answer to the enquiry, why there was no noise made about this Act, while there is so much made about the one lately passed, is two fold. In the first place, this Act applied "only to arrests made by the *authorities* of the Confederate Government"—"for *offences* against the same." The *proper* authorities for issuing *warrants* to arrest, are the Courts, whose duty it is to issue warrants for arrests whenever offences or crimes are charged upon oath or affirmation, stating probable cause. The section directing the President to cause "proper officers to investigate the cases, &c.," in its immediate connection with the proceeding, had nothing in it calculated to awaken, alarm, or excite objection, for by "*proper* officers" all naturally supposed *judicial* officers only could be meant—Judges who would or might act in discharging under writs of *habeas corpus*, if that privilege had not been suspended. In this connection, these words seemed naturally enough to have a meaning far different from what they have when taken from their context and put into this late Act, in which it is clear enough they are there intended to apply to other than judicial officers. There was then, nor now, any objection, as far as I am aware of, to the suspension of the privilege of the writ of *habeas corpus* in any city, town, or district, or generally throughout the country, if Congress really has good reasons to believe the public safety requires it, and if the power to suspend be constitutionally exercised. The objection to the late Act is that it attempts to do what cannot constitutionally be done.

But in the second place, in answer to the enquiry, why no noise was made about the Act of October, 1862, I need only say, that upon the bare statement of the real and substantial objections to that Act, it was admitted to be unconstitutional and void, because it attempted to confer the power to suspend the writ upon the President, when, in his judgment, the public safety required it in the localities embraced in its terms. Congress alone, under the Constitution, has the power to suspend the privileges of the writ. They cannot confer this power upon the President or anybody else. This is now conclusively admitted both by Congress and the President in the late act, for it is set forth in the preamble, "whereas, the power of suspending the privilege of said writ is vested solely in the Congress," &c. This is an admission on the record that the other Act was unconstitutional and void. But, to my mind, it is just as clear that Congress cannot confer upon the President, or any other officer but a judicial one, the power to issue orders or warrants for the arrest of persons in civil life as it was then, and on the passage of a similar Act previously that they could not confer the power upon the President to suspend the privi-

lege of the writ of *habeas corpus*. The late Act is just as void as the previous ones, and for a like reason. In it Congress has attempted to do what they had not power to do. The first Act on the subject was assented to on the 27th February, 1862. That attempted to confer on the President the power not only to suspend the privilege of the writ of *habeas corpus* in certain cities, towns, military districts, &c., but to declare *martial law*, &c. This soon after was amended. But no one can say that during the progress of these events that I was silent. My sentiments upon the subject of martial law, against the unconstitutional usurpations of power, were proclaimed throughout the Confederacy, as they are now, and will be proclaimed against the dangerous departures from principle in this act. Martial law has been abandoned, and I trust the departures from principle in this Act will be too. I speak upon these as I wrote upon those. I have no inclination to arraign the motives of those who disagree with me. Great principles are at stake, and I feel impelled by a high sense of duty, when my opinions are sought, to give them fully, clearly, and earnestly.

A few thoughts more upon the subject in another view. These relate to the objects and workings of the Act, if it be sustained and carried out. You have been told that it affects none but the disloyal, none but traitors, or those who are no better than traitors, spies, bridge burners, and the like, and you have been appealed to and asked, if any such are entitled to your sympathies? I affirm, and shall maintain before the world that this Act affects and may wrongfully oppress as loyal and as good citizens and as true to our cause as ever trod the soil or breathed the air of the South. This I shall make so plain to you that no man will ever venture to gainsay or deny it. This long list of offences, set forth in such array, in the thirteen specifications, are, as I view them, but rubbish and verbage, which tend to cover and hide what in its workings will be found to be the whole gist of the Act. Whether such was the real object and intention of its framers and advocates, I know not. Against their motives or patriotism I have nothing to say. I take the Act as I find it. The real gist of the whole of it lies, so far as appears upon its face, covered up in the fifth specification near the middle of the Act. It is embraced in these words—"and attempts to avoid military service!"

Here is a plain indisputable attempt to deny every citizen in this broad land the right, if ordered into service, to have the question whether he is liable to military duty under the laws tried and adjudicated by the courts? Whether such was the real object and intention of those who voted for the bill, I know not, but such would be its undeniable effect if sustained and enforced. A man over fifty years of age, with half a dozen sons in the field, who has done every thing in his power for the

cause from the beginning of the war, may, under instructions from the Secretary of War, be arrested by the sub-enrolling officer and ordered to camp, upon the assumed ground that, in point of fact, he is under fifty. Under this law, if it be law, he would be without remedy or redress. A case to illustrate by occurred within my own knowledge last fall. Orders were issued to examine the census returns of 1860, as to the ages of persons, and instructions given to sub-enrolling officers to be governed as to the age of parties by those returns. In the case alluded to by the census returns, the party was not forty-five at the time of arrest. He protested that he had not made the census returns himself—that the return was erroneous, it was not given in under oath—that he was able to prove by evidence entirely satisfactory, that he was over forty-five and not liable under the law as it then stood to military service. His privilege of the writ of *habeas corpus*—his right to have this question of fact and law settled by the courts, was not then suspended, and he was discharged. But what would be his situation, and that of all others in like circumstances, if this Act be held to be law? It is said that the Act affects none but the disloyal, and that no good law-abiding man can justly complain of it! As I view it, its main effect is to close the doors of justice against thousands of citizens, good and true, who may appeal to the courts for their legal rights. Take the case of those who availed themselves of the law to put in substitutes—some for one motive, and some for another—some, doubtless, for not only good but patriotic motives, believing that they could render the country more service at home than in the field. I know one who has put in two, one when the call was for those up to thirty-five years of age, the other when the call was to forty-five. One of these substitutes was an alien, whose services could not have been commanded by the government, and who is now at Charleston, and has been during the whole siege of that place. This man who put in these two substitutes, remained at home most usefully employed in producing provisions for the army. All his surplus went that way, while he had two men, abler bodied than he was, fighting for him in the field. Who would say that such a man is disloyal to the cause, if, believing in his heart that he was not liable under his contract, as he supposed, with his government, he should appeal to the courts to decide the question whether he is liable under the law or not? As to the law allowing substitutes in the first instance, and then the law abrogating or annulling it, and calling the principals into the field, I have nothing to say. What I maintain is, that it is the great constitutional right of any and every party affected by the last of these Acts on the subject, to have the question of his legal liability judicially determined if he choses, and then as a good law abiding citizen act accordingly.

Take another illustration of the practical workings of the

Act. Congress by law exempted from conscription such State officers as the Legislatures of the respective States might designate as proper to be retained for State purposes. At your last session you, by resolution, designated all the civil and militia officers of the State. A late order has been issued by General Cooper, as is seen in the papers, doubtless under order from the Secretary of War, to enrol and send to camp a large number of these officers—amongst others, Justices of the Peace, Tax Receivers and Collectors. This order is clearly against the law of Congress and your solemn resolution. It is in direct antagonism to the decision of the Supreme Court of this State, in the very case in which they sustained the power of Congress to raise troops by conscription, but in which they held that the power was limited, and that the civil officers of the States could not be constitutionally conscripted. I use the word *conscripted* purposely—I know there is no such word in the English language—neither is there any such word as *conscribe*, the one usually in vogue now a days. A new word had to be coined for a process or mode of raising armies, unheard of and undreamed of by our ancestors, and I choose to coin one which best expresses my idea of it. But under this order of General Cooper, is it not the right of these officers, is it not the right of the State, to have the question of their liability to conscription determined by the Judiciary? Is it not the high duty of Congress to compel the Secretary of War and General Cooper to abide by that decision and to obey their own laws, instead of attempting to close the doors of the courts against the adjudication of all such matters that come within the sphere of their constitutional duties.

Again, Congress by the last section of the first Conscript Act, declared that all who were or should be subject to it might, previous to enrollment, volunteer in any companies then in the service. Notwithstanding this express law of Congress, securing the right of any person liable to conscription to volunteer in *any company* then in the service previous to enrollment, General Cooper has issued an order by direction of the Secretary of War, doubtless, denying this right to volunteer in any company then in existence, unless the number in such company is less than sixty-four men. Under this illegal order a number of as brave, gallant, chivalrous, noble spirited youths, as ever went forth to battle for their country and peril their lives for constitutional liberty, will be deprived of their birth-right—the right to have questions of law, affecting their liberty, determined by the courts—if this Act, closing the courts against them, shall be held to be valid! Tell me not that this Act affects none but traitors, spies, and the disloyal! I heard not long since of a case in Albany; a father carried his son to the district enrolling officer; he had just arrived at the age when he was liable to conscription; he never wished him to go to the war

as a conscript. His older brothers had gone before him, they went out early in the war as volunteers, and then formed part of that living wall of freemen which still stands between us and a ruthless foe. He told the enrolling officer, in substance, that he had brought this boy, the Benjamin of his heart, as another offering on the altar of his country. He was going as a volunteer under that clause of the Act alluded to; he had selected the company to which his brothers belonged. He was told this could not be allowed. At this the father was greatly surprised and mortified, as may be readily understood; he insisted upon the rights of his son. Great as his surprise was at first however, greater was it still to be. The son was ordered to jail, to be sent to the Camp of Instruction, to be assigned to any company his officers might choose.—The high spirited youth, scorning conscription, offering himself as a volunteer, asking nothing but his legal rights, instead of being sent on with cheers by the crowd, and a father's parting blessing, was sent to jail as a felon!

Can any one say, that this was not a most shameful outrage? It is, however, but one of a thousand cases like it that may occur, and probably will occur, should this law be held to be constitutional; and if the doors of the Courts are to be closed against all who may be ordered to the military service, without any regard to law. I have here two letters which will further illustrate how this Act will work. They are both addressed to the Governor. One is from a Mr. Samuel H. Parker, written in Charleston jail. [Here Mr. S. read the letter, stating that the writer was a native Georgian. That he lived in Whitfield county. That he was forty-seven years of age, as the record would show, then in Whitfield county. That he was at his home with his wife, (who was then sick,) with ten small children, on the 27th of February, of this year, when a party on horses, came and arrested him, and carried him to Dalton. And from Dalton, he was carried to Atlanta. He protested that he was over age, and not liable to military duty; that he was forty-seven years old. He was told that that was the right age to make a soldier in South Carolina, and he was sent on to Charleston, where he was in jail. He appealed to the Governor of his native State, and the State of his residence, to have justice done him.] Of this Mr. Parker, (said Mr. S.) I know nothing, except what is stated in this letter. It may be false, and yet it *may* be true. If true, justice ought to be done to a man so greatly outraged and wronged. But whether true or false, the Courts ought never to be closed against an enquiry into the facts, and never will be, so long as personal security has any protection in this country.

The other letter is from the Hon. John Oats, a member of this House, from the county of Murray. It is dated the 11th of this month, the day after the meeting of this session. [Here

Mr. S. read Mr. Oats' letter, stating that he was detained at Atlanta under very painful circumstances. His oldest son, who had been in the army, was subject to epilepsy, and had been discharged in consequence. That afterwards, he had been carried before a Board of Physicians, who pronounced his case incurable, and he was given a certificate of final discharge, on the grounds of permanent disability. That on the morning Mr. Oats left home for Milledgeville, the Provost Guard at Dalton, went to his house at Spring Place, and carried his son off to Dalton. They carried him from there to Cartersville, to Capt. Starr, the enrolling officer for the 10th Congressional District, and he, knowing all about his case, sent him back to Dalton, stating in writing on the order, that he was sent there under, that according to law, and his orders from the War Department, he was not liable to Conscription. That on his return to Dalton, they put him in irons, and assigned him to Charleston, to go into the fortifications, and that he expected him in Atlanta that evening. He was waiting with the best counsel he could get, to see if there was any virtue in the writ of *habeas corpus*. He asked that the Governor would get some member to procure for him, leave of absence from the House.[

Well for Mr. Oats, (said Mr. Stephens) and his afflicted son, there is some virtue yet in the writ of *habeas corpus*.

But what virtue would be in it, if it is denied under this Act, to all who attempt to avoid military service. Nothing could induce me to read such letters on such an occasion, but a sense of duty, to show you what will be the state of things all over the country, under the operations of such a law, when orders are issued for its enforcement, and to put you on your guard, against the flippant phrase that the Act will affect none but traitors, spies and disloyal people. Had it been in operation, had the Courts regarded it, Mr. Oats' son, who had served his country faithfully, as long as he was able, might now have been beyond remedy, beyond redress and beyond hope. Will you say, can you say, that the Courts ought to be, or can be closed, against such monstrous wrongs? Will you not rather put upon the attempt to do it, the seal of your unqualified condemnation? Tell me not, to put confidence in the President. That he will never abuse the power attempted to be lodged in his hands. The abuses may not be by the President. He will not execute the military orders that will be given. This will necessarily devolve upon subordinates, scattered all over the country, from the Potomac to the Rio Grande. He would have to possess two superhuman attributes, to prevent abuses—omniscience, and omnipresence!

These things our forefathers knew, and hence they threw around the personal security of the free citizens of this country a firmer, safer, surer protection, than confidence in any man, against abuses of power, even when exercised under his own

eye and by himself. That protection is the shield of the Constitution. See to it that you do not in an evil hour tear this shield off and cast it away, or permit others to do it, lest in a day you wot not of, you sorely repent it.

Enough has been said, without dwelling longer upon this point, to show, without the possibility of a doubt, that the Act does affect others, and large classes of others than spies, traitors, bridge burners and disloyal persons—that the very gist of the Act, whatever may have been the intent or the motive, will operate most wrongfully and oppressively on as loyal, as patriotic, and as true men as ever inherited a freeman's birthright under a Southern sky. You have also seen that there is and can be no necessity for the passage of such an Act, even if it were constitutional, in the case of spies, traitors, or conspirators. For, if there be a traitor in the Confederacy—if such a monster exists—if any well grounded suspicion is entertained that any such exists, why not have him legally arrested, by judicial warrant, upon oath or affirmation, setting forth *probable* cause, and then he can be held under a constitutional suspension of the privileges of the writ—he can be tried, and if found guilty, punished. What more can the public safety by possibilty require? Why dispense with the oath? Why dispense with judicial warrants? Why put it in the power of any man on earth to order the arrest of another on a simple *charge*, to which nobody will *swear?* Who is safe under such a law? Who knows, when he goes forth, when or whether he shall ever return? The President, according to this Act, is to have power to arrest and imprison who ever he pleases, upon a bare charge, made, perhaps, by an enemy of disloyalty. The party making the charge not being required to swear to it! Who, I repeat, is safe or would be under such a law? What were the real objects of the Act, in these clauses, as to treason, disloyalty, and the others, I do not know. To me it seems to be unreasonable to suppose that it was to reach real traitors and persons *guilty* of the offences stated. For that object could have been easily accomplished without any such extraordinary power. I was not at Richmond when the Act passed. I heard none of the discussions, and knew none of the reasons assigned, either by the President in asking it, or the members or Senators who voted for it. I was at home, prostrate with disease, from which I have not yet recovered, and by reason of which I address you with so much feebleness on this occasion. But I have heard that one object was to control certain elections and expected assemblages in North Carolina, to put a muzzle upon certain presses and a bit in the mouth of certain speakers in that State. If this be so, I regard it the more dangerous to public liberty. I know nothing of the politics of North Carolina—nothing of the position of her leading public men. If there be traitors there, let them be constitutionally arrested,

tried and punished. No fears need be indulged of bare error there, or anywhere else, if reason is left free to combat it. The idea is incredible, that a majority of the people of that gallant and noble old State, which was foremost in the war of the Revolution in her ever memorable Mecklenburg Declaration of Independence can, if let alone, ever be induced to prove themselves so recreant to the principles of their fathers as to abandon our cause and espouse the despotism of the North. Her people, ahead of all the Colonies, first flaunted in the breeze the flag of Independence and State Sovereignty. She cannot be the first to abandon it—no, never! I cannot believe it! If her people were really so inclined, however, we could not prevent it by force—we could not, under the Constitution if we would, and we ought not if we could. Ours is a government founded upon the consent of sovereign States, and will be itself destroyed by the very act whenever it attempts to maintain or perpetuate its existence by force over its respective members. The surest way to check any inclination in North Carolina to quit our sisterhood, if any such really exist even to the most limited extent amongst her people, is to show them that the struggle is continued as it was begun, for the maintenance of constitutional liberty. If, with this great truth ever before them, a majority of her people should prefer despotism to liberty, I would say to her, as to "a wayward sister, depart in peace." I want to see no Maryland this side of the Potomac.

Another serious objection to the measure, showing its impolicy, is the effect it will have upon our cause abroad. I have never looked to foreign intervention, or early recognition, and do not now. European governments have no sympathy with either side in this struggle. They are rejoiced to see professed republicans cutting each other's throats, and the failure, as they think, of the great experiment of self-government on this continent. They saw that the North went into despotism immediately on the separation of the South, and their fondest hopes and expectations are that the same destiny awaits us. This has usually been the fate of republics. This is the sentiment of all the governments in Europe. But we have friends there, as you heard last night, in the eloquent remarks of the gentleman [Hon. L. Q. C. Lamar] who addressed you on our foreign relations, and who has lately returned from those countries. Those friends are anxiously and hopefully watching the issue of the present conflict. In speeches, papers and reviews they are defending our cause. No argument used by them heretofore has been more effectual than the contrast drawn between the Federals and the Confederates upon the subject of the writ of *habeas corpus*. Here, notwithstanding our dangers and perils, the military has always been kept subordinate to the civil authorities. Here all the landmarks of English liberty have been preserved and maintained, while at the North not a vestige of them is left. There,

instead of courts of justice with open doors, the country is dotted all over with prisons and bastiles. No better argument in behalf of a people struggling for constitutional liberty could have been presented to arouse sympathy in our favor. It showed that we were passing through a fiery furnace for a great cause, and passsing through unscathed. It showed that whatever may be the state of things at the North, that at the South at least the great light of the principles of self-government, civil and religious liberty, established on this continent by our ancestors, which was looked to with encouragement and hope by the down-trodden of all nations, was not yet extinguished, but was still burning brightly in the hands of their Southern sons, even burning the more brightly from the intensity of the heat of the conflict in which we are engaged. To us, in deed and in truth, is committed the hopes of the world as to the capacity and ability of man for self-government. Let us see to it that these hopes and expectations do not fail. Let us prove ourselves equal to the high mission before us.

One other view only, that relates to the particularly dangerous tendency of this act in the present state of the country, and the policy indicated by Congress. Conscription has been extended to embrace all between seventeen and fifty years of age. It cannot be possible that the intention and object of that measure was really to call and keep in the field all between those ages. The folly and ruinous consequences of such a policy is too apparent. Details are to be made, and must be made, to a large extent. The effect and the object of this measure, therefore, was not to raise armies or procure soldiers, but to put all the population of the country between those ages under military law. Whatever the object was, the effect is to put much the larger portion of the labor of the country, both white and slave, under the complete control of the President. Under this system almost all the useful and necessary occupations of life will be completely under the control of one man. No one between the ages of seventeen and fifty can tan your leather, make your shoes, grind your grain, shoe your horse, lay your plough, make your wagon, repair your harness, superintend your farm, procure your salt, or perform any other of the necessary vocations of life, (except teachers, preachers and physicians, and a very few others) without permission from the President. This is certainly an extraordinary and a dangerous power. In this connection take in view this *habeas corpus* suspension act, by which it has been shown the attempt is made to confer upon him the power to order the arrest and imprisonment of any man, woman or child in the Confederacy, on the bare charge, unsupported by oath, of any of the acts for which arrests are allowed to be made. Could the whole country be more completely under the power and control of one man, except as to life-limb? Could dictatorial powers be more complete? In this connection consider, also,

the strong appeals that have been made for some time past, by leading journals, openly for a Dictator. Coming events often cast their shadows before. Could art or ingenuity have devised a shorter or a surer cut to that end, for all practical purposes, than the whole policy adopted by the last Congress, and now before you for consideration? As to the objects, or motives, or patriotism of those who adopted that policy, that is not the question. The presentation of the case as it stands is what your attention is called to. Nor is the probability of the abuse of the power the question. Some, doubtless, think it for the best interests of the country to have a Dictator. Such are not unfrequently to be met with whose intelligence, probity and general good character in private life are not to be questioned, however much their wisdom, judgment and principles may be deplored. In such times, when considering the facts as they exist, and looking at the policy indicated in all its bearings, the most ill-timed, delusive and dangerous words that can be uttered are, can you not trust the President? Have you not confidence in him that he will not abuse the powers thus confided in him? To all such questions my answer is, without any reflection or imputation against our present Chief Magistrate, that the measure of my confidence in him, and all other public officers, is the Constitution. To the question of whether I would not or cannot trust him with these high powers not conferred by the Constitution, my answer is the same that I gave to one who submitted a plan for a dictatorship to me some months ago: "I am utterly opposed to every thing looking to, or tending towards a Dictatorship in this country. Language would fail to give utterance to my inexpressible repugnance at the bare suggestion of such a lamentable catastrophe. There is no man living, and not one of the illustrious dead, whom, if now living, I would so trust."

In any and every view, therefore, I look upon this *habeas corpus* suspension Act as unwise, impolitic, unconstitutional and dangerous to public liberty.

But you have been asked what can you do? Do? You can do much. If you believe the Act to be unconstitutional, you can and ought so to declare your deliberate judgment to be. What can you do? What did Kentucky and Virginia do in 1798–'99, under similar circumstances? What did Jefferson do, and what did Madison do, and what did the legislators of those States then do?

Though a war was then threatening with France—though armies were being raised—though Washington was called from his retirement to take command as Lieutenant-General—though it was said then as now, that all discussions of even obnoxious measures of Congress would be hurtful to the public cause, they did not hesitate, by solemn resolves by the Legislatures, to declare the alien and sedition laws unconstitutional and utterly

void. Those Acts of Congress, in my judgment, were not more clearly unconstitutional, or more dangerous to liberty, than this Act now under review. What can you do? You can invoke its repeal, and ask the government officials and the people in the meantime, to let the question of constitutionality be submitted to the courts, and both sides to abide by the decision.

Some seem to be of the opinion, that those who oppose this Act are for a counter-revolution. No such thing, I am for no counter-revolution. The object is to keep the present one, great in its aims and grand in its purposes, upon the right track—the one on which it was started, and that on which alone it can attain noble objects and majestic achievements. The surest way to prevent a counter-revolution, is for the State to speak out and declare her opinions upon this subject. For as certain as day succeeds night, the people of this Confederacy will never live long in peace and quiet under any government with the principles of this Act settled as its established policy, and held to be in conformity with the provisions of its fundamental law. The action of the Virginia Legislature in 1799, saved the old government, beyond question, from a counter and a bloody revolution; kept it on the right track for sixty years afterwards, in its unparalleled career of growth, prosperity, development, progress, happiness, and renown. All our present troubles, North and South, sprang from violations of those great constitutional principles therein set forth.

Let no one, therefore, be deterred from performing his duty on this occasion by the cry of counter revolution, nor by the cry that it is the duty of all, in this hour of peril, to support the Government. Our Government is composed of Executive, Legislative and Judicial Departments, under the Constitution. He most truly and faithfully supports the Government who supports and defends the Constitution. Be not misled by this cry, or that you must not say anything against the administration, or you will injure the cause. This is the argument of the preacher, who insisted that his derelictions should not be exposed, because if they were, it would injure his usefulness as a minister. Derelict ministers are not the cause. Listen to no such cry. And let no one be influenced by that other cry, of the bad effect such discussions and such action will have upon our gallant citizen soldiers in the field. I know something of the feeling of these men. I have witnessed their hardships, their privations and their discomforts in camp. I have witnessed and ministered to their wants and sufferings from disease and wounds in hospitals. I know something of the sentiments that actuated the great majority of them, when they quit home, with all its endearments, and went out to this war—not as mercenaries or human machines, but as intelligent, high-minded, noble spirited gentlemen, who were proud of their birthright as freemen, and "who, knowing their rights," dared maintain

them, at any and every cost and sacrifice. The old Barons who extorted *Magna Charta* from their oppressor and wrong-doer by a resort to arms, did not present a grander spectacle for the admiration of the world when they went forth to their work, thoroughly imbued with a sense of the right for the right's sake than this gallant band of patriots did when they went forth to this war, inspired with no motive but a thorough devotion to and ardent attachment for constitutional liberty. To defend this and maintain it inviolate for themselves and those who should come after them, was their sole object. Their ancient rights, usages, institutions, and liberties were threatened by an insolent foe, who had trampled the Constitution of our common ancesters under foot. They and we all had quit the Union, when the rights of all of us were no longer respected under it, but we had rescued the Constitution—the Ark of the Covenant—and this is what they went forth to defend. These were the sentiments with which your armies were raised as if by magic. These are the sentiments with which re-enlistments for the war have been made. These are the sentiments with which your ranks would have been filled to the last man whose services can be relied upon in action if conscription had never been resorted to.

You cannot, therefore, send these gallant defenders of constitutional liberty, a more cheering message than that, while they are battling for their rights and the common rights of all in the field, you are keeping sacred watch, and guard over the same in the public councils. They will enter the fight with renewed vigor, from the assurance that their toil, and sacrifice and blood will not be in vain, but that when the strife is over and independence is acknowledged, it will not be a bare name, a shadow and a mockery, but that with it they and their children after them shall enjoy that liberty for which they now peril all.—Next to this, the most encouraging message you could send them is, that while all feel that the brunt of the fight must be borne by them and the only, sure hope of success is in the powers of their arms, yet every possible and honorable effort will be made by the civil departments of the government to terminate the struggle by negotiation and adjustment, upon the principles for which they entered the contest.

Gentlemen, I have addressed you longer than I expected to be able to do. My strength will not allow me to say more. I do not know that I shall ever address you again, or see you again. Great events have passed since standing in this place three years ago. I addressed your predecessors on a similar request, upon the questions then immediately pending our present troubles. Many who were then with us have since passed away—some in the ordinary course of life, while many of them have fallen upon the battle-field, offering up their lives in the great cause in which we are engaged. Still greater

events may be just ahead of us. What fate or fortune awaits you or me, in the contingencies of the times, is unknown to us all. We may meet again, or we may not. But as a parting remembrance, a lasting *memento*, to be engraven on your memories and your hearts, I warn you against that most insideous enemy which approaches with her syren song, "Independence first and Liberty afterwards." It is a fatal delusion. Liberty is the animating spirit, the soul of our system of Government, and like the soul of man, when once lost it is lost forever. There is for it no redemption, except through blood. Never for a moment permit yourselves to look upon liberty, that Constitutional liberty which you inherited as a birth right, as subordinate to Independence. The one was resorted to, to secure the other. Let them ever be held and cherished as objects co-ordinate, co-existent, co-equal, co-eval, and forever inseparable. Let them stand together "through weal and through woe," and if such be our fate, let them and us all go down together in a common ruin. Without liberty, I would not turn upon my heel for independence. I scorn all independence which does not secure liberty. I warn you also against another fatal delusion, commonly dressed up in the fascinating language of, "If we are to have a master, who would not prefer to have a Southern one to a Northern one." Use no such language. Countenance none such. Evil communications are as corrupting in politics as in morals.

> "Vice is a monster of such hideous mien,
> That to be hated, needs but to be seen.
> But seen too oft' familiar with her face,
> We first endure, then pity, then embrace."

I would not turn upon my heel to choose between masters. I was not born to have a master from either the North or South. I shall never choose between candidates for that office. Shall never degrade the right of suffrage in such an election. I have no wish or desire to live after the degredation of my country, and have no intention to survive its liberties, if life be the necessary sacrifice of their maintainence to the utmost of my ability, to the bitter end. As for myself, give me liberty as secured in the Constitution with all its guaranties, amongst which is the sovereignty of Georgia, or give me death. This is my motto while living, and I want no better epitaph when I am dead.

Senators and Representatives, the honor, the rights, the dignity, the glory of Georgia, is in your hands. See to it as faithful sentinels upon the watchtower, that no harm or detriment come to any of those high and sacred trusts, while committed to your charge. (Immense cheers and applause.)

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